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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

0220-079

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on 12/14/2005

Signature

Typed or printed name

Krishna Kalidindi

Application Number

09/749,993

Filed

12/28/2000

First Named Inventor

Addison Barksdale

Art Unit

3624

Examiner

Kelly Campen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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attorney or agent of record.

Registration number 41,461

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

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Typed or printed name

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Telephone number

12/14/2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Application No. 09/749,993
Docket No. 0220-079

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	Mail Stop AF
)	
Addison BARKSDALE, et al.)	Group Art Unit: 3624
)	
Application No.: 09/749,993)	Examiner: Kelly Campen
)	
Filed: December 28, 2000)	Confirmation No.: 6873
)	
For: Carried-Forward Service Units and)	
Commoditization Thereof)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Final Office Action mailed on July 14, 2005 and the Advisory Action faxed on December 12, 2005, Applicants respectfully request review of the Examiner's rejections prior to Appeal for at least the following reasons. A Notice of Appeal and a Petition for Extension of Time is being filed concurrently herewith.

1. The cited portion of Peters Does Not Teach A Billing Computer, For Each Billing Cycle, Carrying Forward Remaining Service Unit Credits To Be Available During A Subsequent Billing Cycle

Claim 1 stands rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Peters (U.S. Patent No. 5,884,284). Specifically, the Final Office Action cites col. 29, lines 3-18 for allegedly teaching a billing computer, for each billing cycle, *if service units remain after applying the service unit credits obtained by the customer and extant against the service units used by the customer, carrying forward the remaining service unit credits to be available during a subsequent billing cycle*. However, Applicant respectfully submits that this characterization of the teaching of Peters is incorrect for at least the following reasons.

Peters describes a computerized system and method for managing a telecommunication user account (col. 1, lines 8-10). As described by Peters, a subscriber database is accessed and unbilled usage data for billing (such as regular monthly fees, pay-for-view fees and equipment and maintenance charges) and historical information (such as balances forwarded and recent payments yet to be credited) is collected. A bill is then generated based on this information (col. 29, lines 3 to 18).

Peters prepares a billing statement based on regular monthly fees and usage fees as related to pay-for-view usage. As such, Peters does not disclose a customer obtaining service unit credits, applying the service unit credits against service units used by the customer and carrying forward remaining service unit credits to be available during a subsequent billing cycle as asserted in the Official Action.

The balances forwarded in Peters refer to previous over payments and not to service unit credits obtained by the customer. There is no such entity as unused monthly fees, equipment and maintenance fees. Assuming, strictly *arguendo*, that the pay-for-view fees of Peters can be equated to service unit credits as claimed, Peters does not disclose a customer obtaining pay-for-

view fee credits, applying the obtained credits against pay-for-use fees incurred by the customer and carrying forward remaining pay-for-view fee credits to be available during a subsequent billing cycle.

As described, Peters simply fails to disclose a billing computer, for each billing cycle, *carrying forward the remaining service unit credits to be available during a subsequent billing cycle.*

2. The cited portion of Peters Does Not Teach, Allowing The Customer To Treat The Service Units As A Commodity That May Be Bought, Sold And/Or Traded For Services And/Or Goods

The Final Office Action cites col. 29, lines 3-18 for allegedly teaching, *allowing the customer to treat the service unit credits as a commodity, whereby the commoditized service unit credits may be bought, sold, and/or traded for services and/or goods.* However, Applicant respectfully submits that this characterization of the teaching of Peters is incorrect for at least the following reasons.

Peters describes the applicability of his billing method for various services such as satellite service, telephone service, cable television service, etc. as well as mixes of subscription or pay-for-use services such as telephone service offered by cable companies (col. 31, lines 9-31).

Peters fails to teach the use of service unit credits. As such, Peters fails to anticipate *allowing the customer to treat service unit credits as a commodity.* Accordingly, withdrawal of the rejection of claim 1 (and of claims 2-21) under 35 U.S.C. §102(b) is respectfully requested.

3. The Rejection Of Claims 1-21 Under 35 U.S.C §101 Has Been Overcome

The Final Office Action (repeating the language of the Non-Final Office Action) maintains the rejection of claims 1-21 under 35 U.S.C. §101 and suggests (again, using the language of a previous Office Action) amending the claims to include language directed to a computer in the body of the claim.

The response to the Non-Final Action included amendment to independent claim 1 to recite the use of a computer in the body of the claim as suggested (See *a billing computer* in claim 1, lines 7 and 9). However, this amendment appears to have been overlooked. Accordingly, withdrawal of the rejection of claim 1-21 under 35 U.S.C. §101 is respectfully requested.

4. Claim 1 Has Been Mis-Characterized By The Final Office Action

The Final Office Action (on page 10, lines 8-13) asserts that certain features which have been argued in the response to the Non-Final Office Action are not recited in the claims. However, these features as specified in the Final Office Action (i.e. carrying forward remaining service unit credits and treating service unit credits as a commodity) are clearly included in claim 1 (See claim 1, lines 12-17).

All of the objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance and a notice to that effect is earnestly solicited. Should the Examiner have any questions with respect to expediting the prosecution of this application, he is urged to contact the undersigned at (703) 893-8500.

Respectfully submitted,

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Date: December 14, 2005